

7.12 (17A,455A) Presiding officer.

7.12(1) *Qualification.* Except as otherwise provided in this subrule, an administrative law judge shall preside at contested case hearings.

a. On motion of a party or on its own motion, the agency may order that the hearing be conducted before the agency or an appeal board appointed pursuant to Iowa Code section 17A.11(1).

b. In a hazardous waste facility site licensing proceeding pursuant to Iowa Code section 455B.477, the hearing shall be before the environmental protection commission, with at least a quorum present, and with an administrative law judge present to assist the commission in ensuring that the requirements of Iowa Code chapter 17A are met.

c. In the case of an appeal to or review on motion of the agency of a proposed decision of the administrative law judge or appeal board, the agency shall preside.

7.12(2) Disqualification.

a. Grounds for disqualification.

(1) A presiding officer shall not participate in the making of a proposed or final decision if the individual has prosecuted or advocated in connection with that case, the specific controversy underlying that case or another pending factually related controversy that may culminate in a case, involving the same parties.

(2) A presiding officer shall not be subject to the authority, direction or discretion of any person who has prosecuted or advocated in connection with that case, the specific controversy underlying that case or a pending factually related case or controversy, involving the same parties.

(3) A member of an agency having jurisdiction of a case shall not participate in the making of a final decision or order if the member is employed by, receives directly or indirectly personal income from, or has other substantial connection with a person subject to permit or enforcement action pending before the commission.

(4) A presiding officer shall not be biased for or against any party.

b. Affidavit asserting disqualification. A party may file

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an affidavit asserting disqualification of a presiding officer under this subrule at any time, except that an affidavit against a member of the commission on appeal or review of the proposed decision shall be filed prior to any hearing on appeal or review of the proposed decision. A determination on whether the individual challenged should participate shall be made by the agency before further participation by the individual challenged.

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PRM: 60 FR 20465 (4/26/95)

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State Proposal: N/A

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PLDE File: IA-36

Description: EPA approved a new chapter "Rules of Practice in Contested Cases." This chapter governs procedures in contested cases generally including appeals of administrative orders, appeals of license or permit conditions, license or permit denials or suspensions. This chapter was approved in conjunction with Title V rules.

[illegible]

Difference Between the State and EPA-Approved Regulation

None.